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## Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID MEYER, et. al.

Case No.: 15-CV-2405-WVG

**Plaintiff,**

vs.

## CAPITAL ALLIANCE GROUP, et. al.,

**PLAINTIFFS' SEPARATE  
STATEMENT OF MATERIAL  
FACTS IN DISPUTE IN  
SUPPORT OF PLAINTIFFS'  
OPPOSITION TO PARTIAL  
SUMMARY JUDGMENT BY  
DEFENDANTS**

Hon. William V. Gallo  
Hearing Sept 18, 2017, 2:00 pm

## **INTRODUCTION**

Pursuant to the Federal Rules of Civil Procedure Rule 56 and Local Rule 7.1.f.1, Plaintiffs Kenneth Moser, Arnie Katz and DCM Properties, Inc., hereby submit this Separate Statement of Disputed Facts in support of their Opposition to Defendants' Partial Summary Judgment. Below establishes that that there are material facts that are in dispute and therefore the Court should not grant the Partial Summary Judgment by the Defendants.

1                   **NOTE REGARDING PLAINTIFFS' DECLARATIONS**

2                   The Declaration of Arnie Katz and David Meyer are essentially the same  
 3 declarations that were attached to the Plaintiff's Motion for Partial Summary  
 4 Judgment, however the paragraphs/exhibits concerning liability have been  
 5 removed in order to shorten them to what is relevant to this opposition.

6

7                   **SEPARATE STATEMENT OF UNDISPUTED FACT**

8                   Plaintiff contends there is no genuine issue as to the following material facts:

10 <b>DISPUTED MATERIAL FACTS</b>	11 <b>SUPPORTING EVIDENCE</b>
11                   1. Plaintiff Arnie Katz received 12 facsimiles from the Defendants.	Exhibit A. Declaration of Arnie Katz ("Decl. Katz") ¶14-15
13                   2. Plaintiff DCM Properties received 14 facsimiles from the Defendants.	Declaration of David Meyer ("Decl. Meyer") ¶4-6
15                   3. Plaintiff Kenneth Moser received 16 facsimiles from the Defendants.	Declaration of Kenneth Moser ("Decl. Moser") ¶3-7
17                   4. Plaintiff Kenneth Moser received pre- 18 recorded message telemarketing phone 19 calls from the Defendants.	Decl. Moser ¶10-17
20                   5. DCM Properties has a physical 21 facsimile machine	Decl Meyer ¶4
22                   6. DCM Properties receive a facsimile 23 the machine prints with ink and on 24 paper, which is property of DCM 25 Properties	Decl Meyer ¶5
26                   7. Plaintiff Arnie Katz printed out the 27 facsimiles that he received from 28 Defendants	Decl. Katz ¶12

1	8. Plaintiff Kenneth Moser printed out the facsimiles that he received from Defendants	Decl. Moser ¶6
4	9. Plaintiff Kenneth Moser suffered inconvenience and annoyance from the phone calls.	Decl. Moser ¶18
7	10. Plaintiff Kenneth Moser has lost his time that was wasted on the phone calls, and lost opportunity costs in that his phone line was tied up by these calls	Decl. Moser ¶22
11	11. The illegal faxes and phone calls caused Plaintiff Kenneth Moser annoyance and frustration.	Decl. Moser ¶18
14	12. Plaintiff Kenneth Moser was agitated by the illegal facsimiles.	Decl. Moser ¶21
16	13. Plaintiff Kenneth Moser was agitated by the pre-recorded telemarketing phone calls.	Decl. Moser ¶22
19	14. The illegal pre-recorded telemarketing phone calls wasted Plaintiff Kenneth Moser's time.	Decl. Moser ¶23

DATED: September 4, 2017

**PRATO & REICHMAN, APC**

/s/ Christopher J. Reichman  
 By: Christopher J. Reichman, Esq.  
**Prato & Reichman, APC**  
 Attorneys for Plaintiffs